

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**DOUGLAS HANDSHOE**

**v.**

**CIVIL ACTION NO. 1:15cv382-HSO-JCG**

**VAUGHN PERRET, et al.**

**ASHOKA'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE  
TO FILE AMENDED COMPLAINT**

COMES NOW Ashoka, Defendant, and responds to Plaintiff's Motion for Leave to File a Third Amended Complaint in this matter as follows:

1

This case was originally filed on November 16, 2015. An Amended Complaint was filed by plaintiff on December 8, 2015.

2.

Ashoka was added as a defendant to this case by virtue of a Second Amended Complaint filed on June 17, 2016. Ashoka filed a motion to dismiss on August 4, 2016. [Doc. 55]. Ashoka's motion to dismiss remains pending before this Court.

3.

In its Reply in Support of Ashoka's Motion to Dismiss [Doc. 66], at pp. 6-8, Ashoka, after arguing that plaintiff's claims against it should be dismissed, noted that any further amendment of the Complaint to add new allegations against Ashoka would be futile because such claims would be time-barred.

4.

Leave to amend a complaint, though typically liberally granted, may properly be denied for undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or if the amendment would be futile in light of the inadequacy of the claims asserted. Fed.R.Civ.P 15(a); *Smith v. EMC Corp.*, 393 F. 3d 590, 595 (5<sup>th</sup> Cir. 2004); *Ruotolo v. City of New York*, 514 F.3d 184, 191 (2d Cir. 2008); *Hopson v. Chase Home Finance LLC*, 14 F. Supp. 3d 774, 796 (S. D. Miss. 2014); *Anderson v. Wells Fargo Bank, N.A.*, 2016 WL 4151120 (S. D. Miss., 8/4/16) (appeal filed).

5.

The proposed Third Amended Complaint, sought to be filed in this case which has been pending for over 12 months, is 53 pages long, consisting of 191 separate paragraphs. The proposed Third Amended Complaint is untimely, evidences plaintiff's repeated failure to correct deficiencies from amendments previously allowed, prejudices Ashoka which has had pending for four months a motion to dismiss, and -- most significantly -- any amendment allowed as to Ashoka would be futile in light of the time-barred nature of the claims being asserted against it, as referenced above and as discussed in Ashoka's earlier brief.

6.

Accordingly, for all these reasons, Plaintiff's Motion for Leave to File a Third Amended Complaint should be denied.

This the 28<sup>th</sup> day of December, 2016.

/s/ Douglas J. Gunn  
Douglas J. Gunn (MS Bar No. 5068)  
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*Attorney for Ashoka* (incorrectly named  
herein as “The Ashoka Foundation”

### **CERTIFICATE OF SERVICE**

I, the undersigned counsel, do hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the ECF system, which sent notification of such filing to all counsel of record who have registered with the ECF system.

This is the 28th day of December, 2016.

/s/ Douglas J. Gunn